O. Charcoal/53

1953.

File No. 40/53

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P15E Legal Department

G BRANCH

Subject:-

LDRD 2218

Opinion on the Bombay Charcoal and firewood Trade licensing Order

File No. O. Charcoal/53

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C.C.M. & M.T.S.

Legal Department File No....C.Charcoal/52....

Cr.No. R.I./C.No.	Subject.	Pages.
	Opinions on the Bombay Charcoal and Firewood Trade Licensing Order.	
1 C-104 16-2-53	Whether it is legally feasible to take any action against the licensees in the absence of sufficient evidences.	1
2 C-126 21-2-53	Cl. 21- Whether any action can be taken against the retailer for failure to dispose of his stock within the specified period for want of purchasers.	3
3 C-105 16-2-53	Cl. 9 (6) Whether the licensing authority has discretion to reject any applin. for a licence.	5
4 C-261 4-5-53	Whether the licensee will be liable for the acts of his nominee if he allows him to carry on the business illegally.	7
5 378 1-7-53	Affidavit made by Mrs.S.Kohlte before a J.P.Whether it would suffice for the purpose of the	9
6 C-[illegible] 6-7-53	Cl. 14 Whether there is any legal objection to refuse to transfer license.	11
7 C- 423 17-7-53	Whether prosecution can be launched against the defaulters for their failure to cover the stock properly inspite of issue of orders.	13-15
8 C-[illegible] 6-7-53	Cl.13 Whether Govt.can refuse to grant license or arbitrary grounds.	17
9 9-4-53	Copy of judgment in mix Petn.No.340/52. Chanpalsingh vs.Asstt.Dir.of C.D. (copy not typed)	19
10 C-426 21-7-53	Whether it is advisable to cancel the order and give a hearing to the party rather than allowing him to go to Court.	21
11 C-669 5-10-53	Cl. 14 Whether the licensing authority can refuse to grant licence on bonafide grounds.	23
12 C- 745 4-12-53	Whether the suit threatened to be filed by M/s Swastik Coal Depot.wd be defensible	25-27
13 C- 694 11-11-53	Whether the suspension of the licence pending prosecution against the licence will amount to contempt of court.	29

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Office of the R.L.A.

The view taken by the Civil Supplies Department that there is no evidence to show that Shri Trivedi had a hand in the sales of charcoal to his customers through the shop of Shri Katkar by Kunwar Mahavir, is correct.Shri Katkar was out of Bombay on leave during the relevant period.In these circumstances,it is not legally feasible to take any action against both the licensees.

Sd/-
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Remembrancer of Legal Affairs.

VHB
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U.E. to C.S.D.,No. C-104 , dated the 16th February 1953.

Office of the R.L.A.

Clause 21 of the Bombay Charcoal and Firewood Trade Licensing Order,1949 empowers the State Government or the Licensing Authority to order a retailer to supply to any person specified quantities of charcoal at specified rates and further empowers them to give general or special directions to a retailer with regard to storage, sale, transport or accounting of charcoal as it may deem fit.The State Government or the Licensing authority can therefore order a retailer at the time of suspending his licence to supply his charcoal at specified rates to persons specified by them;but a mere direction to the retailer to dispose of his stock within a specified period either by sale to consumers,other retailers or resale to the wholesaler is likely to be considered bad in law as being impossible of performance if the parties to whom sale or resale is to be made refuse to purchase stock.No action can therefore lie against the ratailer who cannot dispose of his stock within the specified period for want of purchasers.Government will have therefore to specify the persons to whom he should sell his stock and the persons so named should also be such as would agree to buy from him.

Sd/-
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Remembrancer of Legal Affairs.

VHB
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U.R. to C.S.D.No. G/28, dated the 25th February 1953.

Office of the A.C.A.

As Ramdularsingh and Bhagwati Prasad are brothers and members of a joint family, there is no objection to include the name of Bhagwati Prasad in the licence granted to his brother Ramdularsingh. However, the granting of the licence cannot be made subject to any understanding as proposed by the Civil Supplies Department. The licensing authority has discretion to reject any application for a licence for reasons to be recorded under clause 9(6) of the Bombay Charcoal and Firewood Trade Licensing Order, 1949.

Sd/-
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U.O.to C.... ., No. C- 105 , dated the 16th ebruary 1953.

In his evidence at page 7, the Licensee has admitted that during his absence from Bombay between 14th December 1950 and 8th June 1951, he had appointed Shri Laltaprasad as his nominee for the purpose of running the business. He, however, contends that as soon as the licence was suspended Shri Laltaprasad ceased to be his nominee and therefore he could not be held responsible for any act of Shri Laltaprasad after the suspension of the licence.

The contention of the Licensee is not correct. The suspension of the licence did not affect the Nomination made by him but only suspended the authority conferred by the licence. He had appointed Shri Laltaprasad as his nominee to conduct the business for a period of six months and even after the suspension of the licence his nomination continued inasmuch as the nominee continued to remain in charge of the Licensee's shop premises and assets. If the Licensee who had appointed the nominee allows or suffers his nominee to carry on the business illegally, the Licensee will be liable for the acts of his nominee.

The prinicple that a person cannot be vicariously liable for offences committed by his agent, has no application to the present case.

Sd/-J.R.Dhurandhar
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Remembrancer of Legal Affairs.

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U.R. to C.S.D., No. G- 261 , dated the 4th May 1953.

Legal Department.

The application made by the widow of the deceased licensee to the Superintendent,Licensing Department,Bombay Municipal Corporation cannot be considered as an affidavit merely because the thumb impression of the widow is made in the presence of a J.P. and Hon.Magistrate.The J.P. has made an endorsement on the application that the thumb impression is made in his presence. That means he has satisfied himself only with the fact that the person who affixed the thumb impression is Mrs.Subhadrabai Mohite.If affidavits are taken in all such cases then it would be advisable to ask Mrs.Subhadrabai to make a regular affidavit and forward it to Government.

Sd/-

Additional Secretary to Govt.

VHB 16/8 4 ~ U.R.to C.S.D.,No. 378 , dated the 1st July 1953.

Legal Department.

Under clause 14 of the Bombay Charcoal and Firewood Trade Licensing Order,1949, theLicensing Authority , may, for reasons to be recorded,allow transfer of a licence already granted to any person or persons.In this case, it appears, the police authorities propose to refile the case against the licensee for trading during the period of suspension of his licence and also propose to join his son as a concocused. These circumstances are likely to be considered by any court as sufficient reason for refusing a transfer.There is therefore no legal objection to refuse to transfer the licence in this case.

Sd/-

Additional Secretary to Governmer

VHB 16/8
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U.H.to C.S.D., No. G- 391 , dated the 6th July 1953.

Legal Department.

Under Government Order, Civil Supplies Department, No.32/IV, dated the 12th June 1952 issued under section 8 of the Bombay Essential Commodities and Cattle (Control) Act, 1946, the State Government delegated its powers to make orders in respect of charcoal in so far as it related to its protection from rain, to the Divisional Forest Officer, Kolaba, This Divisional Forest Officer has reported that some of the contractors have not covered their stock in spite of his serving orders under Bombay Essential Commodities And Cattle (Control) Act, 1946, on them to do so. He was instructed by the Director of Civil Supplies (Fuel and Fodder)

(i) to issue show cause notices to them as to why they did not cover the stock and

(ii) not to issue transit passes in the mean-time.

The Divisional Forest Officer thereafter reported that no body has so far given any explanation. In this connection the Civil Supplies Department has raised the following two questions for opinion :-

(1) Whether prosecution can be launched against the twelve defaulters for their failure to cover the stock properly inspite of issue of orders, and

(2) Whether it would be in order to refuse to issue transit passes to them till the proposed prosecution is over, inspite of the fact that charcoal is dry now.

Please see the specimen order issued by the Divisional Forest Officer at page 1 ante. The contractor was directed to cover the stock of charcoal held by him in such manner that it is not damaged by rain. If any contractor has not covered the stock or covered it in such a way that it is damaged by rain, he can be prosecuted if there is sufficient evidence to prove this fact in a Court of Law. The cases may be immediately handed over to the police for thorough investigation and if the evidence collected by them is considered by the Police Prosecutor as sufficient to prove the cases or any of them, then prosecutions may be filed.

It would not be expedient to refuse transit passes only

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because the contractors have not given explanations as called for by the Divisional Forest Officers.In cases in which prosecution is decided upon, the stock should be attached by the police and should be allowed to be sold under the Courts orders and permitted to move.In other cases,which are weak and where it is decided not to prosecute,transit passesshould not be held up only on this score.

Sd/-
Secretary to Government.

U.R. to C.S.D.,No. C- 423, dated the 17th July 1953.

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Legal Department.

On 12th February 1953 a press note was issued informing the public that charcoal retailers' licences will be issued to all persons who can produce a municipal licence and possess a satisfactory place for conducting business.A reference has been made about this declaration in the statement of Shri Lalman at page 23 ante,Before the licence was granted Shri Lalman had made it quite clear to the Licensing Authority that he has purchased the premises and furniture, fittingsetc.,from a person whose licence was cancelled.In view of these circumstances it would not be now open for the licensing authority to cancel the licence under clause 13 of the Bombay Charcoal and Firewood Trade Licensing Order, 1949. Under that clause reasons are required to be recorded and the reasons must not be arbitrary or capricious.The policy laid down by Government cannot be given retrospective effect.

Sd/-

Additional Secretary toGovernment.

VHB 16/8 4 C

U.R. to C.S.D., No. G- 390, dated the 6th July 1953.

Legal Department.

In Miscellaneous Applications Nos.340 and 341 of 1952 filed by Dhanpalsingh Navnitsingh and Ganguli Abdul Kadar, Shri Servai Counsel for Governmmnh did not concede that the order of suspension of a licence pending prosecution was a judicial or quasi judicial order and that the petitioners were entitled to be heard before passing such an order but he told the court that for the purposes of those two petitions he was prepared to give hearing to the petitioners and was prepared to agree to the orders of suspension being set aside by the court.The court therefore set aside the orders and Government had to pay the costs of the petitioners.

This case is similar to the above two cases and if the licensee is refused hearing he would approach the High Court and again Government will be saddled with the costt In the circumstances it would be advisable to cancel the order and give a hearing to the party.

Sd/-

Secretary to Government.

VHB 16/8 4 C U.R. to C.S.D., No. C - 426, dated the 21st July 1953.

Legal Department.

Although Government is not a party to the suit between the importer and the retailer, the important solicitors have given Government a notice about the attachment before judgment of the Charcoal shop belonging to the retailer.

In his affidavit the retailer has said that he is old but he has got given any idea about his correct age. The licensing authority feels that the reason of old age and consequent inability to run the business mentioned by the retailer in his affidavit is not true and the intention in asking for the transfer appears to be to defraud the importer of his dues by getting the license transferred to the name of his son. In these circumstances the case appears to be a fit one for refusing transfer at this stage. Therefore the licensing authority may refuse to transfer the licende under clause 14 of the Bombay Charcoal and Firewood Trade Licensing Order, 1949.

Sd/-

Additional Secretary to Govt.

VHB .R.to C.S.D., No. G- 609, dated the 3rd October 1953.
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The question for consideration is whether the suit threatened to be filed by M/s.Swastik Coal Depot would be defensible.

Sub-clause (2) of clause 10 of the Bombay Charcoal and Firewood Trade Licensing Order, 1949, provides that the Licensing authority may forfeit a part or whole of the deposit for reasons to be recorded in writing. It has been held in R.I.A's opinion No.G- 179, dated 9th May 1951 that the power of Licensing Authority in such cases is limited and extends so far as the observance of the provisions of the said Order and the terms of the licence is concerned and that the Licensing Authority cannot exercise this power arbitrarily and in circumstances extraneous to the provisions of the said order and the terms of the licence. Although this opinion was given with reference to the power to suspend or cancel under clause 13, the same principle would apply to the power to forfeit under clause 10. The Civil Supplies Department has stated in their note at page 106 that under the standing orders the Depot Inspectors were required to sign all cash memos at all Depots other than Sewree Depot in token of having seen the material to be issued to the retailers. A copy of the standing order is not among the papers; but presuming that such a standing order has been issued it will have to be construed as a direction issued under clause 21 to the effect that no wholesaler at a Depot should sell charcoal unless the quality thereof is verified by the Inspector and the cash memo, in respect of which is countersigned by him. In this case the charcoal was of good quality which was subsequently approved by the Chief Inspector and the Depot accepted the blank cash memos only to accommodate the Depot Inspector who is a Government servant. Departmental action has therefore been taken against the Inspector. The Civil Supplies Department has further held that this sort of collusion between the wholesaler and the Inspector should not be permitted and therefore action was taken against the Depot. It would be possible to defend this action as reasonable as the action was taken in the interest of administration of the order.

2.The order forfeiting part of the deposit is issued by the licensing authority under sub-cl.(2) of clause 10.It appears from the papers that the licensing authority acted under the directions of Government when the papers were submitted to the Minister (Civil Supplies).These directions were not given suo moto but were made in appeal proceedings.The first order of suspension of business for ten days was made under clause 21 by the licensing authority.Under that clause,Government too had the power to make a similar order.It is against that order that M/s.Swastik Coal Depot appealed to the Minister (Civil Supplies); and it is in the appeal proceedings that the Minister directed that part of the deposit be forfeited in lieu of the order suspending business for ten days.Government have the power under sub-cl.(3) of clause 10 to make such an order in appeal. It can,therefore,be maintained that the direction was validly given by the Minister in appeal proceedings under clause 21, and that the licensing authority thereafter carried out the direction under sub-clause (2) of clause 10. Furthermore, an appeal was made under clause 10 also, and that appeal was rejected by Government.

3.Therefore, the suit if any filed by the Depot would be defensible.

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Remembrancer of Legal Affairs.

U.R. to C.S.D.No.G-745, dated the 4th December 1953.

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Office of the R.I.A.

The Bombay Charcoal and Firewood Trade Licensing Order, 1949 ceased to be in force in Greater Bombay and the Scheduled villages from the 1st November 1953. All the licences issued under the said Order have therefore automatically lapsed and there is now no question of suspending any licence. The question raised by the Civil Supplies Department in this case viz. whether the suspension of the licence pending prosecution against the licensee will amount to contempt of Court, need not now be considered.

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Remembrancer of Legal Affairs.

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U.R. to C.S.D., No.C-694, dated the 11th November 1953.